

**UNCITRAL** United Nations Commission on International Trade Law



20<sup>TH</sup> OSCE ECONOMIC AND ENVIRONMENTAL FORUM  
SECOND PREPARATORY MEETING  
“Promoting Good Governance and  
Combatting Corruption in Support of  
Socio-Economic Development”  
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**Why regulate infrastructure procurement (PP)?**

- 80% PP by value = “complex” procurement
- PP involves major & important projects
  - Health, education, transport, services eg water, electricity
- Importance of PP market to socio-economic development
- Without regulation, no ability to address desirable policy outcomes
  - Good governance, integrity and avoiding corruption
  - Ensuring value for money
  - Protecting public resources/assets

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### **Financing and operating infrastructure projects**

Possibilities: a spectrum:

- Traditional PP
  - Public ownership and operation
- PFIP/PPP
  - Public ownership and private operation
- Privatisation
  - Private ownership and operation
- Differences arise in the question of financing and operation (public or private), and risk allocation, not types of project

*So should the policy goals differ?*

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### **Regulatory framework for PP/PPP/PFIP: hierarchy**

- Legally binding agreements
  - UN Convention Against Corruption
  - WTO GPA/Regional FTA (cover procurement, some PPP/PFIP)
  - EU Directives (ditto)
- Other relevant "international" texts
  - UNCITRAL Model Law on Procurement (2011)
  - UNCITRAL Legislative Guide/Model Provisions on PFIP (2000, 2003, to be updated)
  - MDBs (eg World Bank, EBRD) Procurement Principles, etc

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**What does a system with good governance include?**

- Prevention and sanctions: legal framework and supporting controls
- Prevention through the promotion of *integrity*, ie
  - Following legal rules and procedures
  - Acting ethically and fairly
    - eg codes of conduct, integrity pacts
  - Avoiding conflicts of interest

*TRANSPARENCY is a key tool*



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**Balancing good governance, achieving value for money and other policy goals**

- Elements of discretion vital to achieve value for money
  - Over-regulation can compromise competence-building, innovation and accountability
  - Under-regulation can operate as a disincentive to adequate planning, and compromise value for money
- There is no right system: depends on the capacity and experience of the procurement officials concerned, and levels of *trust*



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### **Achieving policy goals**

- Use of PP systems for other policy goals
  - eg SME promotion
- Requiring policy goals to be declared and recorded
  - Especially important for natural resource concessions, protecting public assets
- Monopolies/competition policy
- Not just normative questions – implementation vital, eg EBRD/UNCITRAL/OSCE Initiative

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### **For more information**

- [http://www.uncitral.org/uncitral/en/commission/working\\_groups/1Procurement.html](http://www.uncitral.org/uncitral/en/commission/working_groups/1Procurement.html)
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**THANK YOU**